

In the Matter of the Compensation of
RICK SOMMERVILLE, Claimant

WCB Case Nos. 22-00252, 21-04729

ORDER ON REVIEW

Jodie Phillips Polich, Claimant Attorneys
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Reviewing Panel: Members Curey and Ousey.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Cordes's order that: (1) upheld the self-insured employer's denial of his new or omitted medical condition claim for a right femur fracture; and (2) found that medical services directed to the right femur fracture were not causally related to a condition caused in major part by the work injury. On review, the issues are compensability and medical services.

We adopt and affirm the ALJ's order with the following supplementation regarding the medical services issue.¹

The ALJ determined that the disputed medical services were not directed to a condition caused in major part by the work injury because they were directed to the denied right femur fracture condition. Accordingly, the ALJ determined that the disputed medical services were not sufficiently causally related to the work injury.

On review, claimant asserts that even if the disputed medical services (*i.e.*, claimant's medical treatment related to the right femur fracture after October 14, 2021) were directed to the denied right femur fracture condition, they are nonetheless sufficiently causally related to the work injury under the first sentence of ORS 656.245(1)(a) because they were also "for" the previously accepted conditions (femoral neck fracture of the right hip, right hip iliotibial band syndrome, and trochanteric bursitis of the right hip). Specifically, claimant asserts that Dr. Graham's opinion establishes a sufficient causal connection between the disputed medical services and the previously accepted conditions. Based on the following reasoning, we disagree with claimant's assertion.

¹ We adopt the ALJ's reasoning and conclusions regarding the compensability issue.

Under the first sentence of ORS 656.245(1)(a), claimant must establish that the disputed medical services are for a condition that was caused in material part by the work incident. *See* ORS 656.245(1)(a); ORS 656.266(1); *Garcia-Solis v. Farmers Ins. Co.*, 365 Or 26, 37 (2019); *Edwards v. Cavenham Forest Indus.*, 312 Or App 153, 160 (2021).

Claimant's previously accepted right hip conditions were caused in material part by the work injury. Thus, the determinative issue is whether the disputed medical services were "for" those conditions.

The disputed medical services in this case are claimant's post-October 14, 2021, medical treatment related to the right femur fracture. Claimant asserts that the disputed treatment was also "for" the previously accepted conditions based on Dr. Graham's opinion that the treatment for the right femur fracture would not have been necessary but for the work injury and accepted right hip conditions. (Ex. 22-2).

However, as explained by the court in *Edwards*, the key question under the first sentence of ORS 656.245(1)(a) is whether the services were "for" a condition caused by the work injury, not whether they were caused by such a condition. 312 Or App at 161 ("there is no but-for causation standard in the first sentence of ORS 656.245(1)(a)"). Although Dr. Graham stated that claimant sustained a right femur fracture because of the work incident and the previously accepted hip conditions, he did not opine that the post-October 14 medical treatment was for those previously accepted conditions. (Ex. 22). Moreover, no other medical expert opined that the disputed medical services were for the previously accepted hip conditions. Under such circumstances, the record does not persuasively establish that the disputed medical services were for a condition that was caused in material part by the work incident. *See* ORS 656.245(1)(a); *Edwards*, 312 Or App at 161.

In sum, for the aforementioned reasons and those articulated in the ALJ's order, we find that the record does not establish a sufficient causal relationship between the disputed medical services and claimant's work injury. *See* ORS 656.245(1)(a). Accordingly, the ALJ's order is affirmed.

ORDER

The ALJ's order dated November 18, 2022, is affirmed.

Entered at Salem, Oregon on December 1, 2023